

REMARKS

Claims 30-43, 58, and 59-68 are currently pending. Claim 69 has been added, and no claims have been cancelled. Accordingly, claims 30-43 and 58-69 are at issue. Applicant notes that the amendments made herein to claims 30, 60, 63, and 66 are made to clarify the scope of the claims, and for reasons unrelated to patentability.

I. Rejections Under 35 U.S.C. § 103

In paragraph 2 of the Office Action, claims 30-38, 41, 43, 58, 60-63, and 65-67 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jones in view of U.S. Patent No. 5,596,814 to Zingle et al. ("Zingle").

A. Claims 30-38, 41, 43, and 58

The Applicant submits that neither Jones nor Zingle teach, suggest, or disclose, either alone or in combination, all the elements of claim 30. Claim 30 sets forth, among other elements:

a closure capping the body, at least one of the closure and body having a through-going hole . . . a hydrophobic air permeable membrane secured to the inner surface and closing the inner end of the hole; and an air tight seal permanently closing the outer end of the hole.

On p. 2 of the Office Action, the Examiner admits that Jones does not teach an "air tight seal being permanently attached". Instead, the Examiner asserts that Zingle teaches "an air tight seal which is permanently attached to the closure" and that it would have been obvious to modify the teachings of Jones with that of Zingle to arrive at the claimed seal.

Nevertheless, Zingle does not cure the deficiencies of Jones. Zingle does not disclose, teach, or suggest "an air tight seal permanently closing the outer end of the hole." Zingle discloses a stopper (10) having an opening (18) with a membrane (14) positioned over the opening. (Zingle, Col. 4, Lns. 9-19). In one embodiment, the opening (18) located in the stopper (10) has a plug (24) inserted therein that can be raised and lowered to seal and unseal the air passage to the opening (18). (Zingle, Col. 4, Lns. 34-51). Zingle, however, does not disclose that the plug permanently seals the opening, and does not disclose any permanent connection between the plug (24) and the stopper (10). In fact, Zingle implies that the plug (24) and stopper (10) are held together by an interference fit. (See Zingle, Col. 4, Lns. 44-50). The Office Action

asserts that this feature is disclosed at Col. 5, Lns. 41-46, which set forth:

Preferably the rubber stopper is also coated with a lubricant such as a very light film of silicone oil. A lubricant such as silicone oil, which is normally applied to most stoppers to help the stopper fit into the vial, will cross-link under heat and pressure creating an additional adhesive bond between the stopper and the membrane.

Zingle discloses that a silicone-oil lubricant is applied to the stopper (10) to ease the insertion of the stopper into the vial (32) and to create an adhesive bond between the stopper (10) and the membrane (14) upon the application of heat and pressure. In the above quoted passage, however, Zingle does not suggest that an adhesive bond is created between the stopper (10) and the plug (24). Rather, Zingle suggests that a bond is created between the stopper (10) and the membrane (14). Zingle, therefore, does not disclose “an air tight seal permanently closing the outer end of the hole” and cannot cure the deficiencies of Jones. Thus, the cited references do not disclose at least the above element of claim 30. The method taught by Zingle, applied to Jones, would merely ease the insertion of the stopper into the container and secure the venting media to the stopper. The combination would not arrive at “an air tight seal permanently closing the outer end of the hole,” because the movable plug (5 or 20) of Jones would still not be permanently secured to the stopper (2 or 11). The proposed combination, therefore, would not contain all the elements of claim 30 and no *prima facie* case of obviousness has been established with respect to claim 30.

Claims 31-38, 41, 43, and 58 depend from claim 30 and include all the elements thereof. Thus, for the same reasons as claim 30, the proposed combination of Jones and Zingle cannot arrive at claims 31-38, 41, 43, and 58.

B. Claims 60-62

Claim 60 sets forth, among other limitations:

a closure capping the body, at least one of the closure and body having a through-going hole opening at inner and outer ends . . . a hydrophobic air permeable membrane secured to the inner surface and closing the inner end of the hole; and an air-impermeable sealing material irremovably contained within the hole to provide an air-tight seal over the air permeable membrane.

As described above, the cited references, alone or in combination, do not disclose “an air tight seal permanently closing the outer end of the hole.” Similarly, the cited references, alone or in combination, do not disclose “an air-impermeable sealing material irremovably contained within the hole to provide an air-tight seal over the air permeable membrane.” Thus, claim 60 is patentable over the combination of Jones and Zingle.

Claims 61 and 62 depend from claim 60 and include all the elements thereof. Thus, for the same reasons as claim 60, the proposed combination of Jones and Zingle cannot arrive at claims 61 and 62.

C. Claims 63 and 65

Claim 63 sets forth, among other limitations:

a body having a through-going hole opening at inner and outer ends thereof into respective inner and outer surfaces of the body; a closure capping the body, wherein the hole is spaced from the closure; a hydrophobic air permeable membrane secured to the inner surface and closing the inner end of the hole; and an air tight seal closing the outer end of the hole.

As shown in FIGS. 2 and 3, in one embodiment, the container (10) includes a through-hole (136) in the body, such as in the shoulder portion thereof. The through-hole can be provided with a vent membrane (138) and a seal (140) after cooling. *See* P. 7, Lns. 5-13.

Neither Jones nor Zingle, alone or in combination, can arrive at the above features as claimed. Jones is absent a “body having a through-going hole opening at inner and outer ends thereof into respective inner and outer surfaces of the body; a closure capping the body, wherein the hole is spaced from the closure.” Rather, Jones discloses a container (1) having a mouth (3) adapted to receive a stopper (2 or 11) with a port (14) sealed by a venting medium (30). (Jones, FIGS. 1 and 2). The port (14) is not “spaced from the closure.” Jones, therefore, does not teach or suggest the above limitation. Zingle does not cure the deficiencies of Jones, because, as shown in FIG. 4, the opening (18) is not spaced from the stopper (10). Thus, Zingle cannot fairly suggest the above limitation or cure the deficiencies of Jones, and no *prima facie* case of obviousness has been established with respect to Claim 63.

Claim 65 depends from claim 63 and includes all of the elements thereof. Thus, for the same reasons as claim 63, the proposed combination of Jones and Zingle cannot arrive at claim 65.

D. Claims 66-67

Claim 66 sets forth, among other limitations:

a body having a through-going hole opening at inner and outer ends thereof into respective inner and outer surfaces of the body; a closure capping the body, wherein the hole is spaced from the closure; a hydrophobic air permeable membrane secured to the inner surface and closing the inner end of the hole; and an air-impermeable sealing material irremovably contained within the hole to provide an air-tight seal over the air permeable membrane.

For the same reasons articulated above with respect to claim 63 the proposed combination does not disclose “a body having a through-going hole opening at inner and outer ends thereof into respective inner and outer surfaces of the body; a closure capping the body, wherein the hole is spaced from the closure.” Additionally for the same reasons articulated above with respect to claim 30, the proposed combination of Jones and Zingle do not disclose “an air-impermeable sealing material irremovably contained within the hole to provide an air-tight seal over the air permeable membrane.”

Claim 67 depends from claim 66 and includes all the elements thereof. Thus, for the same reasons as claim 66, the proposed combination of Jones and Zingle cannot arrive at claim 66.

II. New Claims

New independent claim 69 contains, among other elements, “a body adapted to be fillable with a substance below a head space area and heated at an above ambient first temperature, the body having an open mouth and a through-going hole opening at inner and outer ends thereof into respective inner and outer surfaces of the body.” As discussed above none of the cited references disclose, teach, or suggest a “body having an open mouth and a through-going hole opening.” Accordingly, claim 69 is patentable over the cited references.

III. Allowable Subject Matter

The Examiner indicated, in paragraph 3, that claims 39, 40, 42, 59, 64, and 68 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Applicants thank the Examiner for indication of allowable subject matter.

CONCLUSION


In view of the foregoing, Applicant respectfully requests reconsideration of the Examiner's rejections and objections, and allowance of claims 30-43, 58, and 59-69 in the present Application. Applicant submits that the Application is in condition for allowance and respectfully requests an early notice of the same.

Please charge all fees in connection with this communication to Deposit Account No. 19-0733.

Respectfully submitted,

Dated: March 31, 2008

By: _____


Brad Van Pelt, Reg. No. 59,773
Banner & Witcoff, Ltd.
Ten South Wacker Drive, Suite 3000
Chicago, Illinois 60606
312.463.5000